

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1514**

State of Minnesota,
Appellant,

vs.

Algene Leeland Vossen,
Respondent.

**Filed May 16, 2022
Affirmed
Frisch, Judge**

Kandiyohi County District Court
File No. 34-CR-20-658

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for appellant)

Judie Marshall, Kent D. Marshall, Judie Marshall Law LLC, Manchester, Connecticut (for respondent)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this appeal from the district court's order finding respondent not competent to stand trial, appellant State of Minnesota argues that the district court improperly weighed

the evidence to conclude that respondent could not rationally consult with his counsel. Respondent asserts that we lack jurisdiction over the appeal because the district court's competency order is not final. We accept jurisdiction and affirm.

FACTS

In July 2020, appellant State of Minnesota charged then-80-year-old respondent Algene Leeland Vossen with one count of second-degree murder related to a January 1974 death that occurred in Willmar. Pursuant to Minn. R. Crim. P. 20.01, the district court ordered a psychological evaluation to determine Vossen's competency to stand trial. The court-appointed forensic psychologist, Dr. Tricia Aiken, concluded that Vossen was not competent to stand trial. Pursuant to Minn. R. Crim. P. 20.01, subd. 5(a)(1), the state requested and received a contested competency hearing. In anticipation of the hearing, the state and Vossen each retained their own expert to conduct an evaluation of Vossen's competency. The state's expert, Dr. Harlan Gilbertson, determined that Vossen was competent to stand trial. Vossen's expert, Dr. Sara Vaccarella, concluded that Vossen was not competent to stand trial. At the hearing, the district court heard testimony from each of the three experts and received each expert's report regarding Vossen's competency to stand trial.

Dr. Aiken evaluated Vossen first in March 2021 and again in August 2021. In the first evaluation, Dr. Aiken stated that, although Vossen had a fair factual understanding of the court proceedings and the charge he faced, she was concerned that he would be unable to rationally consult with his counsel. Her concern was based on Vossen's inability to chronologically discuss events and devise a workable defense strategy. She observed that

Vossen had “obvious problems with confusion,” often responding to direct questions with irrelevant or changing answers. She testified that she did not think that Vossen could pay sufficient attention during a trial because he gets distracted or confused, and he “would be extremely vulnerable in testimony.” Based on Vossen’s inability to rationally consult with counsel, Dr. Aiken concluded that Vossen was not competent to stand trial. In the second evaluation, Dr. Aiken found that Vossen looked stronger, was more alert, and gave more detailed answers. Even so, she observed that Vossen had the same difficulties with answering questions. She again concluded that Vossen was not competent to stand trial because he is unable to consult rationally with counsel.

In July 2021, Dr. Vaccarella evaluated Vossen. Dr. Vaccarella similarly concluded that Vossen exhibited satisfactory factual knowledge of the legal system but lacked rational understanding. She testified that Vossen struggles to take in new information, and he instead fixates on previously learned information, even if it is false, and repeats that information until it “becomes his reality.” She concluded that Vossen’s inability to grasp new information is a significant impairment. She also testified that Vossen has trouble retrieving information without cues and often gives irrelevant answers. She reported that, while there are modifications that the district court could make to accommodate Vossen’s impairment during trial, like cues, reminders, or avoiding compound questions, she believed that these modifications would be “unrealistic and place significant burden on the legal system.” Dr. Vaccarella also concluded that Vossen was not competent to stand trial because he is unable to rationally consult with counsel.

In August 2021, Dr. Gilbertson evaluated Vossen. Like Dr. Aiken and Dr. Vaccarella, Dr. Gilbertson also opined that Vossen has an acceptable factual understanding of the judicial process. But unlike the other two experts, Dr. Gilbertson opined that Vossen could rationally consult with his counsel based on Vossen's ability to articulate specific benefits and drawbacks of different pleas, plea agreements, and jury versus bench trials. He explained that Vossen's intellectual abilities "remain within the broad average range" and that, although Vossen has limited verbal learning and verbal retrieval skills, his "recall improves to within the average range" if he is provided cues. Dr. Gilbertson concluded that Vossen is competent to stand trial.

In all three evaluations, Vossen was adamant that he would plead not guilty and take his case to trial. Dr. Aiken concluded that Vossen's insistence to plead not guilty reflected that he has "very rigid thinking." She was concerned that he lacks a defense strategy and did not recognize that he lacks one. Dr. Vaccarella expressed similar concerns. She observed that Vossen could not form realistic expectations about the outcome of his case. Dr. Gilbertson interpreted Vossen's insistence to plead not guilty differently. He observed that a defendant's decision contradicting their self-interest may still be reasoned and informed. Dr. Gilbertson determined that Vossen is able to make thought-out legal decisions. Dr. Gilbertson also credited Vossen's extensive legal history and courtroom exposure as weighing in favor of his competency.

The district court found that Vossen is too cognitively impaired to adequately assist his counsel in his defense. The district court noted that the testimony from all three experts established that Vossen suffers from significant short-term memory impairment. The

district court reasoned that Vossen’s ability to recall newly learned information is “essential” to his participation in his defense, and the experts who evaluated Vossen opined that his ability to do so is deficient. The district court found that the experts’ opinions established other impairments that also impede Vossen’s ability to consult with and assist counsel in his own defense. The district court specifically noted Vossen’s poor concentration and attention span, struggle to convey accurate information, and susceptibility to suggestion. The district court found that those impairments would also make it difficult for Vossen to convey relevant details to his counsel. The district court determined that Vossen is not competent to stand trial.

The state appeals.

DECISION

Vossen argues that we lack jurisdiction over the appeal because a competency determination is reviewable every six months. Because the jurisdictional question is dispositive, we address that argument before turning to the state’s argument that the district court improperly weighed the evidence regarding Vossen’s competency. We conclude that neither argument is persuasive and affirm the district court’s competency determination.

I. The district court’s competency determination is immediately appealable.

Vossen argues that we lack jurisdiction because “[t]he state has the opportunity to request further review regarding [Vossen’s] competency separate from this appeal,” rendering the order not final under Minn. R. Civ. App. P. 103.03 (final-judgment rule). We disagree.

Under Minn. R. Crim. P. 28.01, subd. 2, the civil appellate rules govern unless the criminal rules direct otherwise. And here, Minn. R. Crim. P. 28.04, subd. 1(1), directs otherwise because it permits the state to appeal “any pretrial order,” which necessarily includes the district court’s order finding that Vossen is not competent to stand trial. The final-judgment rule therefore does not apply to this case.

Instead, to appeal a pretrial order under Minn. R. Crim. P. 28.04, subd. 1(1), the state must show that “the district court’s ruling will have a critical impact on its case.” *State v. Obeta*, 796 N.W.2d 282, 286 (Minn. 2011). “Critical impact” requires that the effect of the pretrial ruling “seriously impede” the prosecution’s case. *State v. Norberg*, 423 N.W.2d 733, 735 (Minn. App. 1988). We agree with the state that the district court’s competency ruling critically impacts its case. The state is currently unable to prosecute Vossen because he is not competent to stand trial, notwithstanding the possibility that this circumstance could change at some undefined point in the future. Indeed, it is possible that Vossen will never be found competent, and the state may never be able to prosecute its case. We conclude that the district court’s competency determination critically impacts the state’s case and accept appellate jurisdiction.

II. The district court properly weighed the evidence of Vossen’s competency.

The state argues that the district court improperly weighed the evidence when concluding that Vossen is not competent. The state contends that, while Vossen has cognitive impairments, the evidence presented to the district court nevertheless establishes that he is able to rationally consult with counsel.

The Minnesota Rules of Criminal Procedure require the suspension of criminal proceedings when a defendant is not legally competent. Minn. R. Crim. P. 20.01, subd. 2. “A defendant is incompetent and must not . . . be tried . . . if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense.” *Id.*; see *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011).

“[W]hen the State is the party asserting that the defendant is competent, the State bears the burden of proving competency” by the greater weight of the evidence. *State v. Curtis*, 921 N.W.2d 342, 348 (Minn. 2018) (discussing Minn. R. Crim. P. 20.01, subd. 5). Because Rule 20.01 requires suspension of the proceedings if the defendant lacks either capacity, the state must prove that the defendant has the ability to both “rationally consult with counsel” and “understand the proceedings or participate in the defense.” Minn. R. Crim. P. 20.01, subd. 2; see *Curtis*, 921 N.W.2d at 348.

On review of a competency determination, we defer to the district court’s factual findings unless such findings are clearly erroneous, *State v. O’Neill*, 945 N.W.2d 71, 82 (Minn. App. 2020), *rev. denied* (Minn. Aug. 11, 2020), and we “independently review the record to determine if the district court gave proper weight to the evidence produced and if its finding of competency is adequately supported by the record,” *Curtis*, 921 N.W.2d at 346 (quotations omitted).

In a thorough and detailed order, the district court evaluated each expert’s report and their testimony and concluded that they unanimously support the conclusion that Vossen has significant short-term memory problems, which “present a substantial obstacle

in [his] ability to consult with counsel or participate in his defense.” There is sufficient record evidence from all three experts that Vossen has significant short-term memory-impairment issues barring him from rationally consulting with counsel, as demonstrated by Vossen confusing dates and the chronology of events, providing inaccurate information, and his inability to process newly learned information.

In his evaluation with Dr. Aiken, Vossen misidentified the current month and the day of the week and could not specify when his wife died, when he was charged with the current offense, and when he moved to his most recent residence. Dr. Aiken reported that Vossen also provided irrelevant answers to questions. In his evaluation with Dr. Vaccarella, Vossen struggled to provide timelines, endorsed conspiracies surrounding the allegations, and when asked complex questions, would simply state “right.” In Dr. Gilbertson’s evaluation, Vossen incorrectly identified the current date and failed to recall his attorney’s name, wrongly believing that it was “John.” Dr. Gilbertson reported that Vossen’s ability to recall new verbal information after a delay was “severely impaired.” Dr. Gilbertson also testified that he did not see much of the “cognitive confusion and lack of clarity” that Dr. Aiken and Dr. Vaccarella saw in Vossen. By relying on their testimony, the district court implicitly found that Dr. Aiken’s and Dr. Vaccarella’s testimonies credibly established Vossen’s state of mental impairment. *See Umphlett v. Comm’r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (providing appellate courts defer to a district court’s implicit credibility determinations), *rev. denied* (Minn. Aug. 30, 1995). It is not our role to reevaluate what relative weight to assign to the

evidence or to competing expert opinions. *See O'Neill*, 945 N.W.2d at 83. The record therefore supports the district court's finding that Vossen is not competent.

The state's arguments do not persuade us otherwise. The state points to evidence that Vossen's "in-depth understanding of the proceedings" means that he can rationally consult with his attorney. But evidence that Vossen understood the charge, the roles of court personnel, the pros and cons of certain plea arrangements, and the range of possible consequences, relate to the second part of the Rule 20.01 analysis—that Vossen is able to "understand the proceedings or participate in the defense." Minn. R. Crim. P. 20.01, subd. 2(b). The district court found that the state failed to prove by a preponderance of the evidence the first part of the Rule 20.01 analysis—that Vossen is able to "rationally consult with counsel." *Id.*, subd. 2(a). In making its determination, the district court found that Vossen's short-term memory impairment and inability to retain new information are determinative of his inability to rationally consult with counsel, a finding that the record supports.

The state counters that Dr. Gilbertson's testimony establishes that Vossen can learn new information and accurately answer questions if provided prompts, and he is therefore able to rationally consult with his counsel. Dr. Gilbertson reported that when Vossen is given a recognition cue, he performs in the average range, meaning that he can overcome some of the issues with information retrieval that Dr. Aiken and Dr. Vaccarella observed. But Dr. Gilbertson also testified that Vossen's inability to recall new information is based primarily on bereavement issues from the loss of his wife. Dr. Gilbertson opined that as the bereavement process continues, Vossen's memory impairment will lessen.

The district court, however, discredited that theory based on Vossen's medical history and Dr. Aiken's opinion. Dr. Aiken testified that Vossen's inability to learn new information cannot be explained by bereavement because she observed the same confused behavior from Vossen in both of her evaluations five months apart. She also testified that even when she rephrased certain questions or gave him cues, Vossen would still reply with irrelevant answers. Although Dr. Gilbertson's and Dr. Aiken's assessments may conflict in certain respects, we afford broad deference to the fact-finder's determination of how to weigh expert testimony, and the state does not argue that the district court clearly erred in its findings. *See State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016); *O'Neill*, 945 N.W.2d at 83.

The state finally argues that the district court erroneously determined that Vossen lacks the ability to rationally consult with counsel because of poor concentration. The state points to Dr. Vaccarella's report which provides that Vossen maintained "good attention and was able to complete the [5.5 hour] interview and testing in a timely manner." But Dr. Vaccarella also reported that Vossen "has clear problems in maintaining attention and concentration." And that assessment is corroborated by Dr. Aiken's report, which also observed that it would be "unlikely [Vossen] would be able to maintain his attention for very long during courtroom proceedings." While the record supports the assertion that Vossen maintained his attention during Dr. Vaccarella's evaluation, the record also supports the experts' opinions that Vossen would be unable to maintain his attention throughout a trial.

In sum, we conclude that the district court properly and demonstrably weighed the evidence, articulated its reasoning for the competency determination, and that determination is adequately supported by the record.

Affirmed.